

AMENDED IN ASSEMBLY APRIL 20, 2005
AMENDED IN ASSEMBLY MARCH 17, 2005
CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 293

Introduced by Assembly Member Maze

February 9, 2005

An act to amend ~~Sections 7195 and~~ *Section* 7197 of, and to add ~~Sections 7196.2, Section 7197.5, and 7198.5~~ to, the Business and Professions Code, relating to home inspections.

LEGISLATIVE COUNSEL'S DIGEST

AB 293, as amended, Maze. Home inspections.

Existing law regulates persons who perform home inspections for a fee in connection with a property transfer, as defined. Existing law defines the term "home inspection" to mean, among other things, an inspection of energy efficiency.

~~This bill would make nonsubstantive changes to these provisions.~~

Existing law defines terms related to home inspections, establishes a standard of care for home inspectors, and prohibits certain inspections in which an inspector or the inspector's employer has a financial interest.

~~This bill would make it unlawful for a home inspector to make any recommendation regarding the need for structural pest control work.~~

The bill would provide that a home inspector may name a seller, real estate broker, or a real estate salesperson as an additional insured in a liability insurance policy.

The bill would require a home inspector *or a company that employs home inspectors* to provide a specified written disclosure to the party on whose behalf the inspection is being performed. ~~The bill would~~

~~also require real estate salespersons or real estate brokers to disclose to clients that home inspections are not required by law.~~

~~The bill would require the Department of Consumer Affairs to establish a toll-free telephone number to record consumer complaints regarding home inspectors and to make a report to specified legislative committees by January 1, 2007. The bill would make it an unfair business practice for a home inspector or a company that employs home inspectors to fail to make those disclosures or to disclose personal identifying information of a person involved in an inspection.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 7195 of the Business and Professions~~
2 ~~Code is amended to read:~~

3 ~~7195. For purposes of this chapter, the following definitions~~
4 ~~apply:~~

5 ~~(a) (1) "Home inspection" is a noninvasive, physical~~
6 ~~examination, performed for a fee in connection with a transfer, as~~
7 ~~defined in subdivision (c), of real property, of the mechanical,~~
8 ~~electrical, or plumbing systems or the structural and essential~~
9 ~~components of a residential dwelling of one to four units~~
10 ~~designed to identify material defects in those systems, structures~~
11 ~~and components. "Home inspection" includes any consultation~~
12 ~~regarding the property that is represented to be a home inspection~~
13 ~~or any confusingly similar term.~~

14 ~~(2) "Home inspection," if requested by the client, may include~~
15 ~~an inspection of energy efficiency. Energy efficiency items to be~~
16 ~~inspected may include any of the following:~~

17 ~~(A) A noninvasive inspection of insulation R-values in attics,~~
18 ~~roofs, walls, floors, and ducts.~~

19 ~~(B) The number of window glass panes and frame types.~~

20 ~~(C) The heating and cooling equipment and water heating~~
21 ~~systems.~~

22 ~~(D) The age and fuel type of major appliances.~~

23 ~~(E) The exhaust and cooling fans.~~

24 ~~(F) The type of thermostat and other systems.~~

25 ~~(G) The general integrity and potential leakage areas of walls,~~
26 ~~window areas, doors, and duct systems.~~

1 ~~(H) The solar control efficiency of existing windows.~~

2 ~~(b) A “material defect” is a condition that significantly affects~~
3 ~~the value, desirability, habitability, or safety of the dwelling.~~
4 ~~Style or aesthetics shall not be considered in determining whether~~
5 ~~a system, structure, or component is defective.~~

6 ~~(c) A “home inspection report” is a written report prepared for~~
7 ~~a fee and issued after a home inspection. The report clearly~~
8 ~~describes and identifies the inspected systems, structures, or~~
9 ~~components of the dwelling, any material defects identified, and~~
10 ~~any recommendations regarding the conditions observed or~~
11 ~~recommendations for evaluation by appropriate persons.~~

12 ~~(d) A “home inspector” is any individual who performs a~~
13 ~~home inspection.~~

14 ~~(e) “Transfer” is a transfer by sale, exchange, real property~~
15 ~~sales contract, as defined in Section 2985 of the Civil Code, lease~~
16 ~~with an option to purchase, any other option to purchase, or~~
17 ~~ground lease coupled with improvements, of real property or~~
18 ~~residential stock cooperative, improved with or consisting of not~~
19 ~~less than one nor more than four dwelling units.~~

20 ~~SEC. 2 Section 7196.2 is added to the Business and~~
21 ~~Professions Code, to read:~~

22 ~~7196.2. A person representing himself or herself as a home~~
23 ~~inspector shall comply with the requirements of subdivision (d)~~
24 ~~of Section 8550.~~

25 ~~SEC. 3~~

26 ~~SECTION 1. Section 7197 of the Business and Professions~~
27 ~~Code is amended to read:~~

28 ~~7197. (a) It is an unfair business practice for a home~~
29 ~~inspector, a company that employs the inspector, or a company~~
30 ~~that is controlled by a company that also has a financial interest~~
31 ~~in a company employing a home inspector, to do any of the~~
32 ~~following:~~

33 ~~(1) To perform or offer to perform, for an additional fee, any~~
34 ~~repairs to a structure on which the inspector, or the inspector’s~~
35 ~~company, has prepared a home inspection report in the past 12~~
36 ~~months.~~

37 ~~(2) Inspect for a fee any property in which the inspector, or the~~
38 ~~inspector’s company, has any financial interest or any interest in~~
39 ~~the transfer of the property.~~

(3) To offer or deliver any compensation, inducement, or reward to the owner of the inspected property, the broker, or agent, for the referral of any business to the inspector or the inspection company.

(4) Accept an engagement to make an inspection or to prepare a report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the report, preestablished findings, or the close of escrow.

(5) A home protection company that is affiliated with or that retains the home inspector does not violate this section if it performs repairs pursuant to claims made under the home protection contract.

(6) To fail to disclose or misrepresent any item required to be disclosed in Section 7197.5.

(7) To disclose personal identifying information, including, but not limited to, the name, address, telephone number, state or federal driver's license number, social security number, or taxpayer identification number, of a buyer, seller, tenant, or others involved in the inspection without the approval of the individual or individuals involved.

(b) This section shall not affect the ability of a structural pest control operator to perform repairs pursuant to Section 8505 as a result of a structural pest control inspection.

(c) Nothing in this section shall prevent a home inspector from naming a seller, a real estate broker, or a real estate salesperson as an additional insured in a liability insurance policy maintained by the home inspector.

SEC. 4

SEC. 2. Section 7197.5 is added to the Business and Professions Code, to read:

7197.5. (a) As soon as it is commercially feasible and prior to commencing a home inspection, a home inspector shall provide a written disclosure to the party on whose behalf the home inspection is being performed that includes the following:

(1) Whether the home inspector maintains professional liability insurance or maintains a minimum bond of five thousand dollars (\$5000).

(2) Whether the home inspector maintains general business liability insurance.

1 (3) The approximate number of home inspections the home
2 inspector has performed for a fee, or a statement of the home
3 inspector's experience and education, including the number of
4 years of his or her experience as a home inspector, and his or her
5 education related to home inspection, specifically including the
6 number of educational hours completed and the educational
7 facility or facilities he or she attended.

8 ~~(4) Whether the home inspector maintains a contractors'~~
9 ~~license or any other type of professional license issued by the~~
10 ~~State of California.~~

11 ~~(5) A statement that home inspections are not required by law~~
12 ~~to complete a property transfer as defined in subdivision (c) of~~
13 ~~Section 7195.~~

14 ~~(6) A statement that home inspectors are not regulated by any~~
15 ~~state agency.~~

16 ~~(7) Information on how to contact the Department of~~
17 ~~Consumer Affairs to file a complain pursuant to Section 7198.5.~~

18 ~~(b) A real estate salesperson or real estate broker shall~~
19 ~~disclose to prospective clients and clients that home inspections~~
20 ~~are not required by law to complete a property transfer as defined~~
21 ~~in subdivision (c) of Section 7195.~~

22 *(4) Affiliations with any professional and nonprofit trade*
23 *associations.*

24 *(5) A list of any home inspection-specific examinations the*
25 *home inspector has passed.*

26 *(6) Any state-issued licenses he or she possesses that may be*
27 *applicable to home inspections.*

28 *(7) A statement that home inspectors are not required to be*
29 *licensed by state law.*

30 *(b) Instead of the written disclosure specified in subdivision*
31 *(a), a company that employs more than one home inspector may*
32 *provide one written disclosure that includes all of the following:*

33 *(1) The number of years of service the company has been*
34 *providing home inspections.*

35 *(2) The approximate number of home inspections completed*
36 *by the company.*

37 *(3) The minimum number of hours of education and training*
38 *the company's home inspectors receive before they are permitted*
39 *to conduct home inspections.*

1 (4) *Whether the company or any of its employees belong to*
2 *any professional or nonprofit trade associations.*

3 (5) *Whether the company or any of its employees possess any*
4 *applicable state licenses.*

5 ~~SEC. 5 Section 7198.5 is added to the Business and~~
6 ~~Professions Code, to read:~~

7 ~~7198.5. (a) It is the intent of the Legislature to determine~~
8 ~~whether or not there is a compelling need to create a regulatory~~
9 ~~scheme for the home inspector industry.~~

10 ~~(b) The Department of Consumer Affairs shall establish a~~
11 ~~toll-free telephone number for consumers to record complaints~~
12 ~~regarding home inspectors.~~

13 ~~(1) The toll-free telephone number shall be maintained for one~~
14 ~~year, beginning January 1, 2006.~~

15 ~~(2) The department shall submit a written report to the Senate~~
16 ~~Committee on Business, Professions and Economic Development~~
17 ~~and the Assembly Committee on Business and Professions~~
18 ~~regarding the number of recorded complaints and the nature of~~
19 ~~the complaints.~~

20 ~~(3) The report shall be submitted to the legislative committees~~
21 ~~by January 1, 2007.~~

22 ~~(4) The department shall use the data resulting from the~~
23 ~~implementation of the toll-free telephone number only to prepare~~
24 ~~a written report to the legislative committees. The complaints~~
25 ~~recorded shall not be acted upon by the department. This toll-free~~
26 ~~telephone number and the resulting complaints will only be used~~
27 ~~to submit a report to the legislative committees.~~

28 ~~(e) Realtor and home inspector associations shall provide the~~
29 ~~toll-free telephone number in subdivision (b) to consumers using~~
30 ~~the services of a home inspector in a property transfer.~~